

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

2010 FEB 16 AM 9:56

DEPUTY CLERK

DICKEY'S BARBECUE RESTAURANTS, INC. §

Plaintiff, §

CIVIL ACTION No. _____

3-10 CV-300-P

vs. §

LIRA, LLC and LUIGI MANGIONE §

Defendants. §

APPENDIXPLAINTIFF'S ORIGINAL COMPLAINT AND APPLICATION FOR TEMPORARY
RESTRANDING ORDER, PRELIMINARY AND PERMANENT INJUNCTION
AND RECOVERY OF DAMAGES

1. Exhibit A-Statement of Account
2. Exhibit B-Trademark Registration No. 3,237,281 for "Dickey's"
3. Exhibit C-Trademark Registration No. 1,980,072 for "Dickey's Barbecue Pit"
4. Exhibit D-Trademark Registration No. 3,205,121 for "Since 1941 Dickey's Barbecue Pit"
5. Affidavit of Daniel Sibley with attached Exhibits

Exhibit A-photograph of electric exterior sign, as modified

Exhibit B-photograph of the hanging Dickey's System menu boards

Exhibit C-photograph of yellow plastic cup

Exhibit D-photographs of the sales receipt

Exhibit E-Daniel Sibley's credit card statement

Exhibit F-photograph of picture with Mr. Dickey, President Reagan and employees

Exhibit G-photographs of Dickey's System decor

Exhibit H-photographs of Dickey's System plastic weave ware plate, paper cups and paper products provided by our supplier Sysco

Exhibit I-photographs of the large electric drive thru menu signboard

8. Affidavit of Michelle Frazier with attached Exhibits (See Plaintiff's Motion for Leave to File Affidavit of Michelle Frazier Under Seal Pursuant to 79.3)

Respectfully submitted,

WESNER COKE & CLYMER, P.C.

By: Stephen A. Coke
Stephen A. Coke
Texas State Bar No. 04519000
Richard W. Winn
Texas State Bar No. 21779700
Three Galleria Tower - Suite 800
13155 Noel Road
Dallas, Texas 75240
Telephone: (972) 770-2600
Fax: (972) 770-2601
E-mail: scoke@wccpc.com
rwinne@wccpc.com
ATTORNEYS FOR PLAINTIFF
DICKEY'S BARBECUE RESTAURANTS, INC.

Statement

Dickey's Barbecue Restaurants, Inc.

4514 Cole Avenue
 Suite 1100
 Dallas, TX 75205

Date

2/9/2010

To:

ID-108 MERIDIAN
 LIRA LLC / LUIGI MANGIONE
 2441 N SNOW GOOSE WAY
 MERIDIAN, ID 83646

Invoice Date	Due Date	Description	Amount	Balance
10/31/2009	11/10/2009	INV # 11116 - ROYALTIES OCT	2,322.00	2,322.00
10/31/2009	11/10/2009	INV # 4412 - AD FUND OCT	774.00	3,096.00
11/30/2009	12/10/2009	INV # 11354 - ROYALTIES NOV	2,009.98	5,105.98
11/30/2009	12/10/2009	INV # 4601 - AD FUND NOV	1,004.99	6,110.97
12/31/2009	12/10/2009	INV # 11526 - ROYALTIES DEC	2,242.99	8,353.96
12/31/2009	12/10/2009	INV # 4724 - AD FUND DEC	1,121.33	9,475.29
1/31/2010	1/10/2010	INV # 11644 - ROYALTIES JAN	2,242.99	11,718.28
1/31/2010	1/10/2010	INV # 4789 - AD FUND JAN	1,121.33	12,839.61
2/28/2010	3/10/2010	INV # 11695 - ROYALTIES	2242.99	15,082.60
2/28/2010	3/10/2010	INV# 4831 - AD FUND FEB	1121.33	16,203.93
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE
3,364.32	3,364.32	3,014.97	3,096.00	0.00
				\$16,203.93

EXHIBIT A

DICKEY'S BARBECUE RESTAURANTS, INC.

TRADEMARK STATUS CHART

Revised 2/2010

MARK - COUNTRY	CLASS - SERVICES	STATUS
DICKEY'S Ireland	43 - Restaurant, carry-out restaurant and catering services	Registered Aug 16 2007 Registration No. 237,260 Renewal due Aug 16 2017
DICKEY'S United Kingdom	43 - Restaurant, takeaway restaurant and catering services	Registered Aug 16 2007 Registration No. 2,464,438 Renewal due Aug 16 2017
DICKEY'S® United States	43 - Restaurant, carry-out restaurant and catering services	Registered May 01 2007 Registration No. 3,237,281 Declaration of Use due May 01 2013 Renewal due May 01 2017
DICKEY'S BARBECUE PIT and Design® United States	42 - Restaurant services	Registered Jun 11 1996 Registration No. 1,980,072 Renewal due Jun 11 2016



<u>MARK - COUNTRY</u>	<u>CLASS - SERVICES</u>	<u>STATUS</u>
DICKEY'S BARBECUE PIT and Design Canada	Restaurant, carry-out and catering services	Registered Sep 20 2007 Registration No. 696,899 Renewal due Sep 2022
DICKEY'S BARBECUE PIT and Design® United States	43 – Restaurant, carry-out restaurant and catering services	Registered Feb 06 2007 Registration No. 3,205,121 Declaration of Use due Feb 06 2013 Renewal due Feb 06 2017

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,237,281
Registered May 1, 2007

SERVICE MARK
PRINCIPAL REGISTER

DICKEY'S

DICKEY'S BARBECUE RESTAURANTS, INC.
(TEXAS CORPORATION)
4514 COLE AVENUE, SUITE 1000
DALLAS, TX 75205

FOR: RESTAURANT, CARRY-OUT RESTAURANT AND CATERING SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 0-0-1941; IN COMMERCE 0-0-1941.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,980,072 AND
2,878,761.

SER. NO. 78-921,121, FILED 6-30-2006.

LAURIE MAYES, EXAMINING ATTORNEY

DICKEY'S BARBECUE RESTAURANTS, INC.

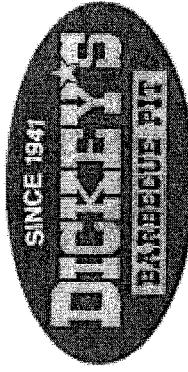
TRADEMARK STATUS CHART

Revised 2/2010

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DICKEY'S BARBECUE PIT and Design® United States	43 – Restaurant, carry-out restaurant and catering services	Registered Feb 06 2007 Registration No. 3,205,121 Declaration of Use due Feb 06 2013 Renewal due Feb 06 2017



Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office Reg. No. 1,980,072
Registered June 11, 1996

**SERVICE MARK
PRINCIPAL REGISTER**



DICKEY'S BARBECUE PIT, INC. (TEXAS CORPORATION)
7770 FOREST LANE
DALLAS, TX 75230

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CLS. 100 AND 101).
FIRST USE 6-0-1994; IN COMMERCE
6-0-1994.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "A TEXAS TRADITION SINCE

1941" AND "BARBECUE PIT", APART FROM
THE MARK AS SHOWN.

THE STIPPLING SHOWN IN THE DRAWING
IS A FEATURE OF THE MARK AND IS NOT
INTENDED TO INDICATE COLOR.

SN 74-309,594, FILED 4-6-1994.

SARAH LEE, EXAMINING ATTORNEY



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 1980072 SERIAL NO: 74/509594 MAILING DATE: 09/16/2006
REGISTRATION DATE: 06/11/1996
MARK: A TEXAS TRADITION SINCE 1941 DICKEY'S BA ETC.
REGISTRATION OWNER: DICKEY'S BARBECUE RESTAURANTS, INC.

CORRESPONDENCE ADDRESS:

Molly Buck Richard
Richard law group
Suite 890
8411 Preston Road
Dallas TX 75225

RECEIVED

09/14/2006

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF RENEWAL

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1059.

ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
042.

GRANATA, SHARON D
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

ORIGINAL



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
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REGISTRATION NO: 1980072 SERIAL NO: 74/509594 MAILING DATE: 09/16/2006
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CORRESPONDENCE ADDRESS:

Molly Buck Richard
Richard law group
Suite 890
8411 Preston Road
Dallas TX 75225

RECEIVED

OCT 4 2006

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THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
042.

GRANATA, SHARON D
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

ORIGINAL

Document Description: Notice-Acceptance-Renewal
Mail / Create Date: 16-Sep-2006



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 1980072 SERIAL NO: 74/509594 MAILING DATE: 09/16/2006
REGISTRATION DATE: 06/11/1996
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REGISTRATION OWNER: DICKEY'S BARBECUE RESTAURANTS, INC.

CORRESPONDENCE ADDRESS:

Molly Buck Richard
Richard law group
Suite 890
8411 Preston Road
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NOTICE OF ACCEPTANCE

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ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
042.

GRANATA, SHARON D
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION
ORIGINAL

REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION

I) SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration.

Failure to file the Section 8 Affidavit will result in the cancellation of the registration.

II) SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration.

Failure to file the Application for Renewal will result in the expiration of the registration.

NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.

TDR Home

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- **Technical help:** For instructions on how to use TDR, or help in resolving technical glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](mailto:ElectronicBusinessSupport), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](mailto:USPTO Contact Center (UCC)).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

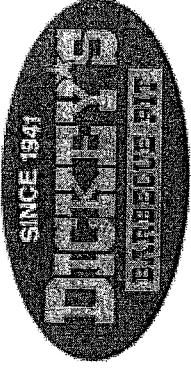
DICKEY'S BARBECUE RESTAURANTS, INC.

TRADEMARK STATUS CHART

Revised 2/2010

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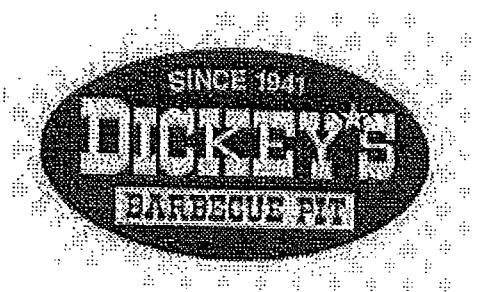
Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,205,121
Registered Feb. 6, 2007

SERVICE MARK
PRINCIPAL REGISTER



DICKEY'S BARBECUE RESTAURANTS, INC.

(TEXAS CORPORATION)

4514 COLE AVENUE, SUITE 1000

DALLAS, TX 75205

FOR: RESTAURANT, CARRY-OUT RESTAURANT AND CATERING SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 8-27-2004; IN COMMERCE 8-27-2004.

OWNER OF U.S. REG. NOS. 1,980,072 AND
2,878,761.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SINCE 1941" AND "BARBECUE
PIT", APART FROM THE MARK AS SHOWN.

SER. NO. 78-646,939, FILED 6-9-2005.

KRISTIN DAHLING, EXAMINING ATTORNEY

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DICKEY'S BARBECUE RESTAURANTS, INC. §

Plaintiff, §

§ CIVIL ACTION No. _____

vs. §

LIRA, LLC and LUIGI MANGIONE §

Defendants.

AFFIDAVIT OF DANIEL SIBLEY

STATE OF TEXAS §

§

COUNTY OF DALLAS §

The undersigned Daniel Sibley, states as follows:

1. My name is Daniel Sibley. I am over the age of twenty-one (21) years, of sound mind and have never been convicted of a felony. I am an adult resident of the State of Texas and am fully competent and capable to testify herein. I have personal knowledge of all of the facts as set forth herein and I am able to swear, and I do hereby swear that all of the facts and statements herein are true and correct.

2. From July 2008 to January 2009 I was the Project Manager for Dickey's Barbecue Restaurants, Inc. From January 2009 to current, I have been Director of Construction for Dickey's Barbecue Restaurants, Inc. As Director of Construction, I am familiar with the Dickey's System, Trademarks, Proprietary Marks and Trade Secrets involved in the construction and operation of a "Dickey's Barbecue Pit" as those terms are defined and referred to in the standard Franchise Agreement utilized for all franchisees of Dickey's Barbecue Restaurants,

Inc., a Texas corporation.

3. I submit this affidavit in support of Plaintiff's request for a temporary restraining order and for temporary and permanent injunction.

4. On January 4, 2010, I was notified by Mr. Roland Dickey, Jr., President of Dickey's Barbecue Restaurants, Inc. that the Franchise Agreement concerning the Meridian, Idaho franchise, located at 2441 N. Snow Goose Way, Meridian, Idaho, had been terminated. Mr. Dickey instructed me to conduct an on-site inspection of the franchisee location to determine whether such franchisee had complied with the notice of termination and the franchisee's post-termination obligations under the Franchise Agreement. On Thursday, January 28, 2010, I traveled to Boise, Idaho and subsequently visited the Dickey's Barbecue Pit at 2441 N. Snow Goose Way, Meridian, Idaho.

5. I arrived at the restaurant at approximately 4:10 p.m. on January 28, 2010. As I arrived, I noted that the Dickey's System electric exterior sign over the main entrance had been modified. The part of the sign that stated "Dickey's" had been removed but the remaining part of the sign continues to use the words "Barbecue Pit" which is part of Dickey's Proprietary Marks and Dickey's System. The name on the sign read "LL Barbecue Pit". True and correct copies of photographs of the electric exterior sign, as modified, are attached hereto as Exhibit A and incorporated herein by reference. After I entered the front door and approached the counter, I saw that the restaurant was still utilizing the two Dickey's System menu boards hanging from the ceiling. The clerk was packaging an order and asked me to wait. As I waited, I used my cell phone camera to record a photograph of the menu signboards that hung from the ceiling and clearly read "Dickey's Plates" on the main board and "Dickey's Classics" on the "Extras" board. A true and correct copy of a photograph of the hanging Dickey's System menu boards is attached

as Exhibit B and incorporated herein by reference. The clerk asked me for my order and I asked if the plates came with 2 sides and she replied "yes". I ordered barbecue brisket with green beans and jalapeno barbecue beans and she handed me a Dickey's yellow plastic cup and a number. The yellow plastic cup is part of the Dickey's System and contained the stylized Trademarks and Proprietary Marks "Since 1941 Dickey's Barbecue Pit". A true and correct copy of a photograph taken by me of the yellow plastic cup is attached hereto as Exhibit C and incorporated herein by reference.

6. I then paid for the meal with my personal credit card. The sales receipt read "Dickey's BBQ". True and correct copies of photographs taken by me of the sales receipt are attached hereto as Exhibit D and incorporated herein by reference. On or after January 30, 2010, I received my credit card statement with a description of the transaction which states "Dickey's 1D-108 Meridian ID". A true and correct copy of the credit card statement is attached hereto as Exhibit E and incorporated herein by reference. Before I walked away, the attendant told me that the ice cream was free and that I should "help myself to a root beer float." Free ice cream has always been a part of the Dickey's System.

7. As I waited for my food, I took several photographs of the dining room, noting that they were still using all of Dickey's System décor, most notably the historic black and white picture of Mr. Roland Dickey (a founder of Dickey's Barbecue Restaurants, Inc.), former President Ronald Reagan and other Dickey's employees standing around an outdoor barbecue pit. A true and correct copy of the picture with Mr. Dickey, President Reagan and such employees is attached hereto as Exhibit F and incorporated herein by reference. In addition, other dining room décor items which are part of the Dickey's System include substantially all black and white photographs, antique guns, utensils, wall art, longhorns, specialized tables and

chairs and other décor items appearing on the walls and resting on the floor of the restaurant premises. True and correct copies of photographs taken by me of other pictures showing Dickey's System décor are attached hereto as Exhibit G and incorporated herein by reference.

8. The attendant brought my food to me and I noted that the food seemed to be produced using Dickey's secret recipes. Each of the menu items ordered were staple items used in the Dickey's System which are prepared using secret recipes which constitute Dickey's Trade Secrets. I further observed the food was served using not only Dickey's yellow plastic cups but also a Dickey's System plastic weave ware plate, paper cups and paper products provided by Dickey's supplier Sysco according to Dickey's System specifications. A true and correct copy of a photograph taken by me of the foregoing Dickey's System products is attached hereto as Exhibit H and incorporated herein by reference.

9. Once outside the restaurant, I took several photographs of the large electric drive thru menu signboard noting that it was the standard Dickey's System drive through menu signboard displaying the Dickey's System Trademarks and Proprietary Marks. True and correct copies of photographs taken by me of the large electric drive thru menu signboard are attached hereto as Exhibit I and incorporated herein by reference. As I headed to my car, a young woman wearing a black polo shirt with "LL" on the front approached me and asked if she could help me. I said no, "I'm from Dickey's corporate office and you are still using our logos and signage." She replied, "we're not Dickey's, we're Double L Barbecue." She then said "You can't take any more pictures, and I've called the cops so you have five minutes to get out of here." I took a photograph of her, then began to continue towards my car. Finally, she said, "You'll hear from our attorney." I then got in my car and drove away.

10. Each of the photographs attached to this affidavit were taken by me on January

28, 2010 and accurately reflect and depict the condition of the restaurant on the date the photographs were taken.

Pursuant to 28 U.S.C. §1746(2), I Daniel Sibley, declare under penalty of perjury that the facts set forth in the Affidavit are true and correct.

Executed on the 11 day of February, 2010.

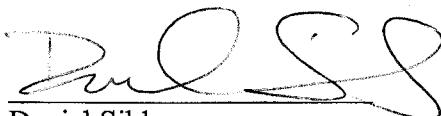

Daniel Sibley



EXHIBIT A





EXHIBIT B

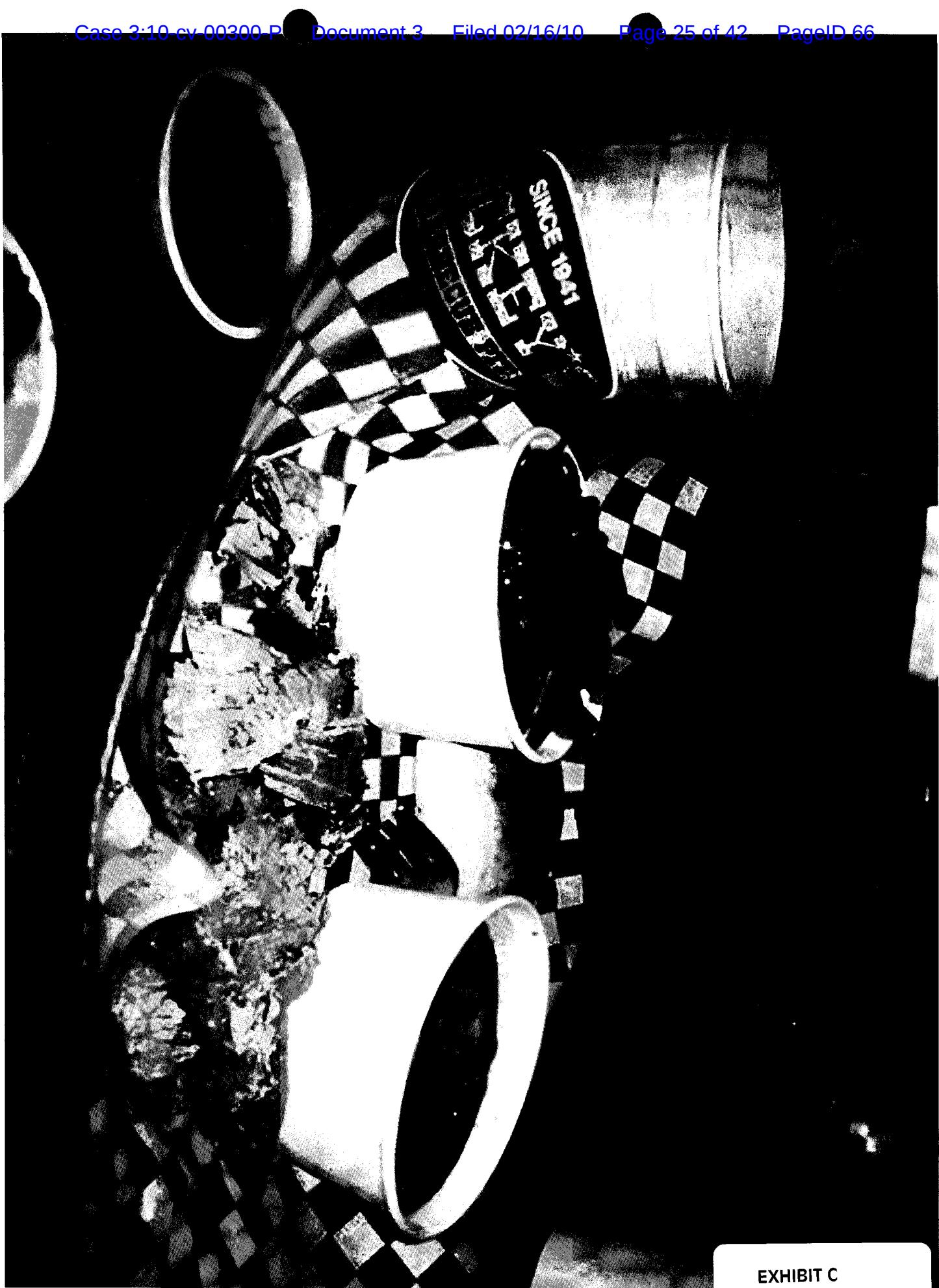
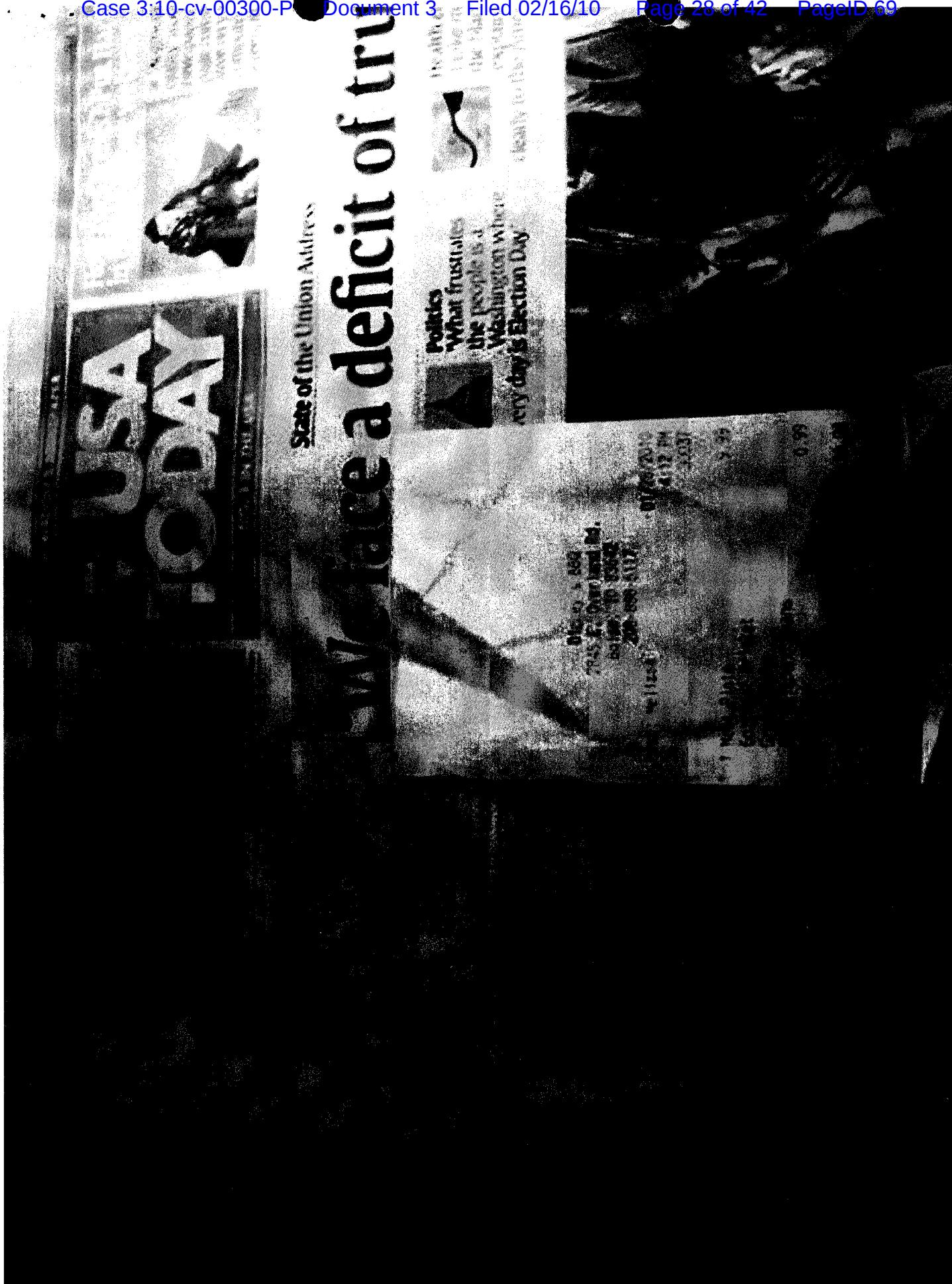


EXHIBIT C





My Accounts / FOUR STAR CHECKING Account Summary

[View Another Account](#)
[Show Chart](#)

Account Number [REDACTED] Current Balance [REDACTED]
 Address DANIEL D SIBLEY Available Balance [REDACTED]
 [REDACTED] DALLAS TX 75206-5619 Interest This Year [REDACTED]

Transit/Routing# [REDACTED] Interest Last Year [REDACTED]
 Overdraft Protection [REDACTED]

Primary Account: USAA SAVINGS [REDACTED]

Transactions from Dec 31, 2009 to Jan 30, 2010

My Accounts / Account Summary

https://www.usaa.com/inet/gas_bank/BkAccounts?action=execute

Transactions from Dec 31, 2009 to Jan 30, 2010

Date	Description	Amount	Balance
Jan 29, 2010	DICKEYS ID-108 MERIDIAN ID DEBIT CARD PURCHASE	(\$11.64)	[REDACTED]



EXHIBIT F















EXHIBIT H



EXHIBIT I

39.99

34.99

44.99

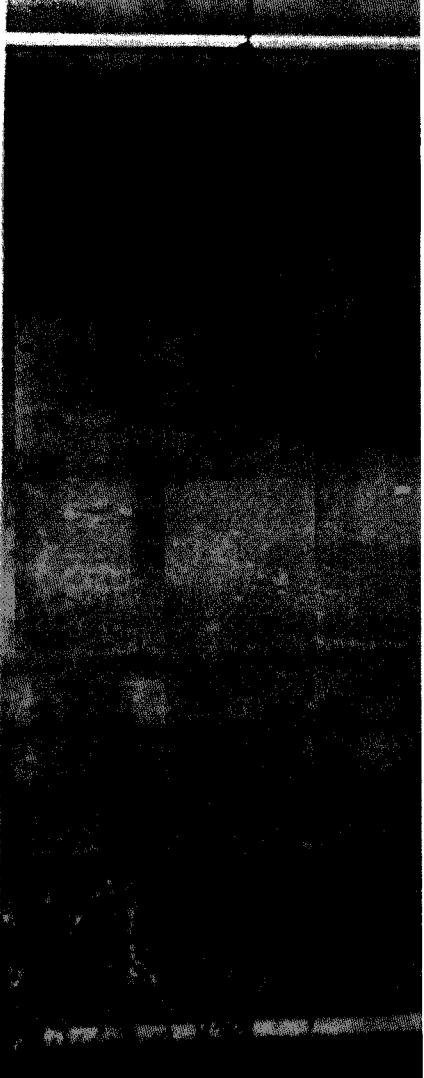
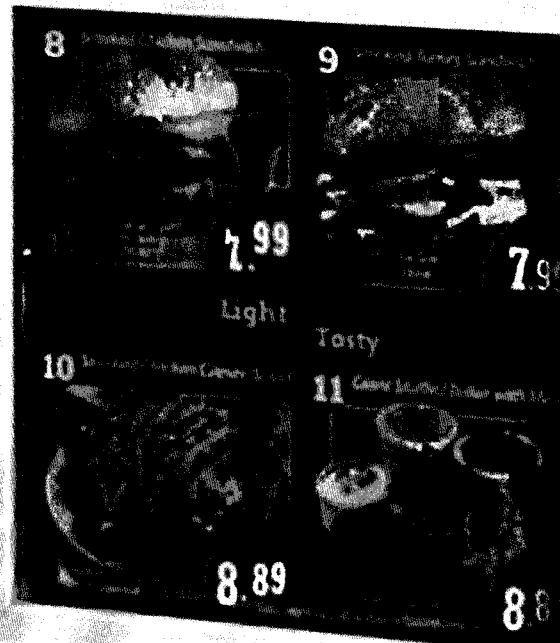
SINCE 1941

FLICK

10

Mark's
Record
Company

12



Please

